IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 564 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IRFAN RASHIDBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 564 of 2001

MR MB AHUJA for Petitioner No. 1

MS ASHA TIWARI FOR MS SM AHUJA for Petitioner No. 1

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 12/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated March 2, 2001, Annexure B to the petition, passed by the

externing authority, that is, Deputy Commissioner of Police, Zone III, Ahmedabad City by which he has externed the petitioner for a period of two years from five districts, that is, Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated May 17, 2001, Annexure C to the petition, passed by the appellate authority, confirming the order passed by the appellate authority, and to prayed to issue appropriate writ, order or direction quashing and setting aside both the aforesaid orders.

2. A show cause notice under section 59 of the Bombay Police Act ('the Act' for short) dated August 8, 2000 was issued to the petitioner wherein several allegations were made against him to the effect that he is a strong-headed quarrelsome person, quarrelling with persons, keeping weapons like knife and razors with him and with the help of those weapons extorting money from traders and innocent people by giving threat to kill them. The said activities are carried on by him just near Thran Darwaja, Pankore Naka, Bhadiar Gali, Relief Road, Pirmasha Roza Road, Salapas Road and in the near by area of Karanj Police station and people are afraid of filing complaint against him and the activities carried on by him are detrimental to the maintenance of public order. Besides this, two cases for commission of the offence under IPC and one Chapter Case also is registered against him. Therefore, by issuing show cause notice, he was called upon to explain as to why he should not be externed from the aforesaid five districts for a period of two years.

3. The externing authority, after considering the material on record, passed the impugned order of externment dated March 2, 2001 at Annexure B to the petition in exercise of powers under Section 56 (b) of the Act externing the petitioner from the aforesaid five districts for a period of two years.

4. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the appellate authority which also came to be dismissed vide order dated May 17, 2001 at Annexure C to the petition.

5. Being aggrieved by the aforesaid two orders passed by the externing authority as well as the appellate authority, the petitioner has approached this Court by way of this petition.

6. Ms. Asha Tiwari, learned advocate for the petitioner, raised several contentions and tried to

convince this Court that the impugned order of externment suffers from the vice of clear non-application of mind. Besides this, she has also raised the contention that the show cause notice was issued on August 2, 2000 and the impugned order of externment was passed on March 2, 2001, that is, after seven months and therefore there is a delay of seven months in passing the impugned order of externment which is not explained either in the show cause notice or in the order of externment and hence the impugned order of externment suffers from non-application of mind and requires to be quashed and set aside.

7. Mr. K.T. Dave, learned AGP who appears on behalf of the respondents, does not dispute the fact with respect to the delay in passing the order of externment. He, therefore, urged to pass appropriate orders in light of the law laid down by the Supreme Court and this Court in this regard.

8. It is true that the externing authority has issued the show cause notice dated August 2, 2000 alleging the anti social activities of the detenu, which according to the externing authority, are detrimental to the maintenance of public order. Pursuant to the show cause notice, proceedings were initiated, opportunity was given to the petitioner to defend his case and the order of externment came to be passed on March 2, 2001. Therefore, there is a delay of seven months in passing the order of externment after issuance of the show cause notice. No explanation is forth coming from the externing authority either in the show cause notice or in the externment as to why there is delay in passing the impugned order of externment. No affidavit in reply is filed by the externing authority explaining the delay.

9. A Division Bench of this Court in the case of Santosh Ramprasad Sharma v. Deputy Commissioner of Police, 1992 (2) GLH 457 has held that in externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the matter, the same will spell out that there is no urgent need or necessity to extern a person from a particular locality or a district. The externment orders curtail the freedom of movement of the person concerned, and, therefore, any laches on the part of the authority concerned cannot be countenanced and the benefit will go to the party concerned and on that score, the externee will be entitled to the benefit of quashing such an order of externment.

10. It may be appreciated that the inquiry under

Section 59 of the Act, being of urgent nature, should be held as expeditiously as possible, and in particular, only a short notice of 3 to 7 days may be given for submitting the written statement, and immediately the date should be fixed for examination of witnesses, and once examination of witnesses is begun, the same should be continued, unless the authority finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. It is not necessary to record each and everything whatever is being stated, if in the opinion of the authority, the same is not relevant. No adjournment should be granted on the flimsy grounds of the lawyer or the externee is busy in attending the marriage or that the advocate is busy in other Court matters. These are not the grounds for adjournment. Though in the Division Bench judgment, it is expressed that the inquiry should be completed within a period of six months, it only provided an outer limit in extreme cases. No definite period of inquiry can be provided. It depends upon the facts of each case. If there is a long delay in passing the orders of externment after the issuance of show cause notice, the externment authority cannot reasonably come to conclusion that the movement or the acts of externee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas.

11. The principles laid down in the above mentioned judgment are squarely applicable to the facts of the present case. Therefore, on this sole ground, the order of externment suffers from the vice of non-application of mind and requires to be quashed and set aside by allowing the petition.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures B passed by the externing authority and C passed by the appellate authority both are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)